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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Neil Zlozower,

Plaintiff,

v.

Warner Records Inc.,

Defendant.

Case No:

**COMPLAINT FOR:
(1) Copyright Infringement
under 17 U.S.C §501**

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Neil Zlozower (“*Plaintiff*”), by and through his undersigned counsel, for his Complaint against defendant Warner Records Inc. (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §101 *et seq.*

2. Plaintiff Neil Zlozower created a photograph of American singer–songwriter and guitarist known as Tommy Petty (the “*Photograph*”) in which

1 Plaintiff owns the rights and licenses for various uses including online and print
2 publications.

3 3. Defendant owns and operates a Facebook Account with the name
4 @Tommy Petty & The Heartbreakers (the “*Account*”).

5 4. Defendant, without permission or authorization from Plaintiff, actively
6 copied and displayed the Photograph on the Account and engaged in this misconduct
7 knowingly and in violation of the United States copyright laws.

8 **PARTIES**

9 5. Plaintiff Neil Zlozower is an individual who is a citizen of the State of
10 California and maintains a principal place of business in Los Angeles County,
11 California.

12 6. Upon information and belief, defendant Warner Records Inc., is a
13 Corporation formed under the laws of the State of Delaware with a principal place
14 of business at 777 South Santa Fe Avenue, Los Angeles, California 90021.

15 **JURISDICTION AND VENUE**

16 7. This Court has subject matter jurisdiction over the federal copyright
17 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

18 8. This Court has personal jurisdiction over Defendant because it
19 maintains its principal place of business in California.

20 9. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does
21 business in this Judicial District and/or because a substantial part of the events or
22 omissions giving rise to the claim occurred in this Judicial District.

23 **FACTS COMMON TO ALL CLAIMS**

24 **A. Plaintiff's Copyright Ownership**

25 10. Plaintiff is a professional photographer by trade who is the legal and
26 rightful owner of certain photographs which Plaintiff commercially licenses.

27 11. Plaintiff has invested significant time and money in building Plaintiff's
28

1 photograph portfolio.

2 12. Plaintiff has obtained active and valid copyright registrations from the
3 United States Copyright Office (the “USCO”) which cover many of Plaintiff’s
4 photographs while many others are the subject of pending copyright applications.

5 13. Plaintiff’s photographs are original, creative works in which Plaintiff
6 owns protectable copyright interests.

7 14. On April 24, 2012, Plaintiff first published the Photograph. A copy of
8 the Photograph is attached hereto as Exhibit 1.

9 15. In creating the Photograph, Plaintiff personally selected the subject
10 matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used
11 to capture the image and made each and every artistic determination necessary for
12 the creation of the work.

13 16. On September 22, 2013, the Photograph was registered by the USCO
14 under Registration No. VA 1-882-147.

15 17. Plaintiff created the Photograph with the intention of it being used
16 commercially and for the purpose of display and/or public distribution.

17 **B. Defendant's Infringing Activity**

18 18. Defendant is the registered owner of the Account and is responsible for
19 its content.

20 19. Defendant is the operator of the Account and is responsible for its
21 content.

22 20. The Account is a key component of Defendant's popular and lucrative
23 commercial enterprise.

24 21. Upon information and belief, Defendant has not implemented adequate
25 internal policies to verify copyright ownership before content use, indicating a gross
26 negligence in legal compliance, which is essential for a company with Defendant's
27 reach, capabilities, and level of sophistication.
28

1 22. Upon information and belief, Defendant's internal policies, if any, are
2 either not designed to verify copyright ownership before content use or are
3 systematically ignored, indicating a willful, recurring disregard for copyright
4 compliance.

5 23. Defendant's failure to adopt or effectively enforce internal copyright
6 policies, if any, indicates *de facto* willful infringement.

7 24. On or about March 27, 2020, Defendant displayed the Photograph on
8 the Account as part of a social media post at URL:
9 <https://www.facebook.com/photo?fbid=10157153220060905&set=a.19193677090>
10 4. A copy of a screengrab of the Account including the Photograph is attached hereto
11 as Exhibit 2.

12 25. Without permission or authorization from Plaintiff, Defendant
13 volitionally copied and/or displayed Plaintiff's copyright protected Photograph on
14 the Account.

15 26. Plaintiff discovered the Infringement on May 31, 2024.

16 27. Upon information and belief, the Photograph was copied and displayed
17 by Defendant without license or permission, thereby infringing on Plaintiff's
18 copyrights in and to the Photograph (hereinafter the unauthorized use set forth above
19 is referred to as the "*Infringement*").

20 28. The Infringement includes a URL ("*Uniform Resource Locator*") for a
21 fixed tangible medium of expression that was sufficiently permanent or stable to
22 permit it to be communicated for a period of more than a transitory duration and
23 therefore constitutes a specific infringement.

24 29. The Infringement is an exact copy of Plaintiff's original image that was
25 directly copied and displayed by Defendant on the Account.

26 30. Upon information and belief, Defendant takes an active and pervasive
27 role in the content posted on its Account, including, but not limited to copying,
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1 posting, selecting, commenting on, and/or displaying images including but not
2 limited to Plaintiff's Photograph.

3 31. Upon information and belief, the Photograph was willfully and
4 volitionally posted to the Account by Defendant.

5 32. Upon information and belief, Defendant was aware of facts or
6 circumstances from which the determination regarding the Infringement was
7 apparent. Defendant cannot claim that it was not aware of the infringing activities,
8 including the specific Infringement which forms the basis of this complaint, since
9 such a claim would amount to only willful blindness to the Infringement on the part
10 of Defendant.

11 33. Upon information and belief, Defendant engaged in the Infringement
12 knowingly and in violation of applicable United States copyright laws.

13 34. Upon information and belief, Defendant had complete control over and
14 actively reviewed and monitored the content posted on the Account.

15 35. Upon information and belief, Defendant has the legal right and ability
16 to control and limit the infringing activities on its Account and exercised and/or had
17 the right and ability to exercise such right.

18 36. Upon information and belief, Defendant monitors the content on its
19 Account.

20 37. Upon information and belief, Defendant has received a financial benefit
21 directly attributable to the Infringement.

22 38. Upon information and belief, the Infringement increased traffic to the
23 Account and, in turn, caused Defendant to realize an increase in its business revenue.

24 39. Upon information and belief, a large number of people have viewed the
25 unlawful copy of the Photograph on the Account.

26 40. Upon information and belief, Defendant at all times had the ability to
27 stop the reproduction and display of Plaintiff's copyrighted material.
28

41. Defendant's use of the Photograph harmed the actual market for the Photograph.

42. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential market for the Photograph.

43. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST COUNT

(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)

44. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

45. The Photograph is an original, creative work in which Plaintiff owns a valid copyright.

46. The Photograph is properly registered with the USCO and Plaintiff has complied with all statutory formalities under the Copyright Act and under regulations published by the USCO.

47. Plaintiff has not granted Defendant a license or the right to use the Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in the copyright to Defendant.

48. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

49. Defendant's reproduction of the Photograph and display of the Photograph constitutes willful copyright infringement.

50. Upon information and belief, Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that

1 Defendant used, published, communicated, posted, publicized, and otherwise held
2 out to the public for commercial benefit, Plaintiff's original and unique Photograph
3 without Plaintiff's consent or authority, by using it on the Account.

4 51. As a result of Defendant's violations of Title 17 of the U.S. Code,
5 Plaintiff is entitled to an award of actual damages and disgorgement of all of
6 Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504
7 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
8 statutory damages against Defendant for each infringement pursuant to 17 U.S.C. §
9 504(c).

10 52. As a result of the Defendant's violations of Title 17 of the U.S. Code,
11 the court in its discretion may allow the recovery of full costs as well as reasonable
12 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

13 53. As a result of Defendant's violations of Title 17 of the U.S. Code,
14 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of
15 Plaintiff's copyright pursuant to 17 U.S.C. § 502.

16 **JURY DEMAND**

17 54. Plaintiff hereby demands a trial of this action by jury.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

20 That the Court enters a judgment finding that Defendant has infringed on
21 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* and
22 therefore award damages and monetary relief as follows:

- 23 a. finding that Defendant infringed Plaintiff's copyright interest in
24 and to the Photograph by copying and displaying it without a
25 license or consent;
- 26 b. for an award of actual damages and disgorgement of all of
27 Defendant's profits attributable to the infringements as provided
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1 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
2 alternative, at Plaintiff's election, an award for statutory damages
3 against Defendant for each infringement pursuant to 17 U.S.C. §
4 504(c), whichever is larger;

- 5 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant
6 from any infringing use of any of Plaintiff's works;
7 d. for costs of litigation and reasonable attorney's fees against
8 Defendant pursuant to 17 U.S.C. § 505
9 e. for pre-judgment interest as permitted by law; and
10 f. for any other relief the Court deems just and proper.
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12 DATED: July 23, 2024

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